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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,039

05/10/2006

Daniel Hendrix

016906-0512

4979

22428 7590 07/23/2008
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

WALBERG, TERESA J

ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

07/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,039

Applicant(s)

HENDRIX ET AL.

Examiner

Teresa J. Walberg

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/06</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 3, and 5-7 are rejected under 35 U.S.C. 102(a) as being anticipated by Andersson (US 2003/0047303).

Andersson discloses a heat exchanger of disk type construction (Fig. 6) with two adjacent disks defining an intermediate space through which a heat exchange medium flows (see para. 2), the entry and/or exit region of the heat exchange medium is expanded on the discharge or inflow side (111 and 112 in Fig. 6), the region runs at least over part of the width of the disk perpendicularly to the average flow direction (111 in Fig. 6), a common heat exchanger inlet and outlet are provided for the disks (para. 0039 and 0041), with at least two heat exchanger medium passages being provided per inlet or outlet (121, 122, 123, 124), the disks being of axially symmetrical design (Fig. 6).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson (US 2003/0047303).

Andersson discloses a heat exchanger of disk type construction having the claimed structure, but does not state that the region runs over at least a third of the width of the disk, that the opening extends essentially over the entire surface of the same except for edge regions and regions in which passages are arranged, and the use of the device.

However, it would have been obvious to one of ordinary skill in the art to use the heat exchanger of Andersson for any desired purpose, and to use any desired size for the region and the opening, based on the intended use of the device.

5. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson (US 2003/0047303) in view of Voss (US 5,230,966).

Andersson discloses a heat exchanger of disk type construction having the claimed structure, with the exception of the heat exchanger medium inlet or outlet having a branching or junction and the branching being in the shape of an arc of a circle and having a bend of 30 to 90 degrees.

Voss discloses a heat exchanger of disk type construction having a heat exchanger medium inlet or outlet having a branching or junction and the branching being in the shape of an arc of a circle and having a bend of 30 to 90 degrees (see 61 in Fig. 4).

It would have been obvious to one of ordinary skill in the art in view of Voss to provide the heat exchanger medium inlet or outlet having a branching or junction and the branching being in the shape of an arc of a circle and having a bend of 30 to 90 degrees in the heat exchanger of Andersson, the motivation being to provide a more even fluid flow across the plate.

6. Claim 13 provides for the use of a heat exchanger as claimed in claim 1 as a charge-air/coolant radiator or oil cooler, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 13 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa J. Walberg whose telephone number is 571-272-4790. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Teresa J. Walberg/
Primary Examiner, Art Unit 3744

/TW/

Notice of References Cited	Application/Control No. 10/579,039		Applicant(s)/Patent Under Reexamination HENDRIX ET AL.	
	Examiner Teresa J. Walberg		Art Unit 3744	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-5,230,966	07-1993	Voss et al.	429/26
*	B	US-2003/0047303	03-2003	Andersson, Jarl	165/167
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449B/PTO
INFORMATION DISCLOSURE
STATEMENT BY APPLICANT

Date Submitted: May 10, 2006

(use as many sheets as necessary)

Complete if Known

Application Number	Unassigned
Filing Date	05/10/2006
First Named Inventor	Daniel HENDRIX
Group Art Unit	Unassigned
Examiner Name	Unassigned
Attorney Docket Number	016908-0512

Sheet 1 of 1

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number	Kind Code ² (if known)			
	A1	5,174,370		HALLGREN	12-29-1992	
	A2	3,862,661		KOVALENKO et al.	01-28-1975	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Documents	Date of Publication of Cited Document MM-DD-YYYY	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵ (if known)				
	A2	WO	97/23759	A1	ALFA LAVAL AB	07-03-1997		
	A3	WO	01/67021	A1	ALFA LAVAL AB	09-13-2002		
	A4	WO	03/010482	A1	ALFA LAVAL CORPORATE AB	02-06-2003		
	A5	WO	2005/012819	A1	BEHR GMBH & CO. KG	02-10-2005		Abst.

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.) date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ⁶

Examiner Signature

/Teresa Walberg/

Date Considered

06/12/2008

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document.

⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /T.V